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STATE ADMINISTRATIVE REORGANIZATION

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Writing in 1919, Mr. W. F. Willoughby declared that "at the present time few reforms of government in the United States are more urgent than that of the reorganization of the administrative services of our state governments, so as to put them upon the integrated or departmental basis."[1] This need for state administrative reorganization is now generally recognized, not only by political scientists and students of administration, but also by public officials and practical administrators. This is indicated by the large number of governors who, in public messages, have urged upon their legislatures the adoption of measures of administrative reform; by the investigations and reports of efficiency and economy commissions or similar bodies created in many states; and by the laws actually passed providing for administrative reorganization in Illinois, Idaho, Nebraska, Ohio, Washington, Massachusetts, and other states.

A movement of this character naturally follows the line of least resistance, and consequently the changes in administrative organization heretofore made have been through statutory enactment rather than through constitutional revision. Inasmuch as, in most states, a faulty organization of the administration is stereotyped in the constitution, thoroughgoing reorganization by mere statutory enactment is practically impossible. The constitutional difficulties which impede the movement for administrative reorganization should warn us against the insertion in the organic law of detailed administrative provisions. The introduction of the short ballot and the equalization of the terms of office of the governor and other state officers are reforms which

[1] The Government of Modern States, p. 393.

are impeded by constitutional restrictions. The changes in the constitution which are desirable in order to provide for needed flexibility are more in the nature of elimination of existing provisions than of the addition of others. The Massachusetts constitutional amendment of 1918 providing for the establishment by law of not more than twenty administrative departments represents, in principle, the extent to which it seems desirable to go in adopting positive constitutional provisions regarding the administrative organization.

In considering the fundamental improvement in the position of the executive department as a whole, two main questions arise: first, what shall be the relation of the executive to the legislature; and, secondly, what provision shall be made in respect to the internal organization of the executive and administrative authorities? With reference to the first question, two radically different views are held. According to one view, the principle of separation of powers must be altogether adandoned, and it is proposed that this change be brought about by making the legislature the central controlling body in the state government and giving it power to appoint and remove the governor. Those who hold this view favor a close approach to the parliamentary form of government in the states. They also hold that the commission form or, better still, the commission-manager form of city government should serve as models for the reorganization of state government.

With reference to this proposal, it may be noted that in the early governments of the original states, the governor was made subordinate to the legislature, being appointed by that body in several of them; but the tendency since then has been in the direction of increasing the independence of the governor from legislative control, especially with reference to his political powers. Any plan for the reorganization of the state governments, in order to be successful, should be in harmony with the general trend of their organic development.

Although there was formerly some agitation in favor of the application of the commission form of city government to the states, this proposal is not now seriously made. It is very

doubtful whether it would be expedient to apply to the state governments without modification the main feature of commission government,—the merging of executive and legislative powers in the hands of the same body. Although the principle of separation of powers has undoubtedly been carried much too far in its application to the state governments, it does not seem wise to go to the other extreme of abandoning it almost altogether by entirely merging the political departments of such governments, or bringing them into such close relation as almost entirely to lose their separate identities. Although the governor is an important political officer, he should also be recognized as holding a distinct and independent position as head of the administration in a much more conspicuous way than is provided for under the commission form of city government.

On the other hand, equal recognition should be given to the position of the governor as a political leader in the matter of legislation and the formulation of public policies. In other words, the governor ought to be in politics, in the best sense of that word. For this reason, it is doubtful whether the commission-manager form of city government is suitable for adoption without modification by the states. The city manager is an administrative expert, subject to the control of the commission, and is not supposed to be in politics. The governor cannot be expected to assume a position of outstanding political leadership and to promote his policies even, if necessary, in opposition to a majority of the legislature, if subject to appointment and removal by that body. The manager plan, if adopted by the states, would probably tend to reduce the governor to the position of a mere administrative chief.[2]

Although it seems desirable that the principle of separation of powers should not be altogether adandoned in state government, the executive and legislative departments should be brought into closer contact and coöperation than now exists between them. This is necessary in order that the political leadership

[2] It might be desirable, however, in some states to authorize the governor to appoint a state business manager to attend to matters of general administration, such as the purchase of supplies for the operating departments and institutions.

of the governor may be effective. To this end a constitutional provision should be adopted giving the governor a seat in the legislature, with the privilege of introducing bills and participating in debate, but without that of voting. The heads of executive departments should also be accorded legislative seats with similar privileges, although they would not be responsible to the legislature, but to the governor. This would enable the executive to assume openly a position of leadership in advocating administration measures on the floor, and would also enable the legislature to criticize more intelligently the results of administrative action.

A rule similar to that adopted by the Illinois house of representatives in 1913 should be established, giving precedence to bills designated by the governor as administration measures. That rule was defective in excepting from such prior consideration appropriation bills. Bills relating to state finance are those which it is especially desirable that the governor should take the initiative in introducing and to which the legislature should be required to give prior consideration. Much the larger share of the expenditures of the state governments is made by the executive and administrative authorities; but, even if this were not true, it seems proper that the governor, in his rôle as political leader, should take the initiative in formulating the budget and in introducing the budget bill. Whoever prepares the budget is likely also to exert an influence upon the plan of state activities or work-program. In planning this work and in drawing up the budget the governor should have the assistance of a staff agency directly under him, which should conduct continuous surveys and investigations of the work of the various agencies engaged in the performance of service functions, in order to collect the information upon which to base a critical examination and revision of the budget estimates.

The legislature should still retain its power of rejecting or modifying the governor's budget. Since the governor retains his item-veto (which should be expanded so as to include the power of reducing items), it seems unnecessary to prohibit the legislature by constitutional provision from increasing the

governor's estimates, though its power to do so might be restricted by requiring an extraordinary majority for this purpose. In case of decided and continuous difference of opinion between the legislature and the governor over important parts of his budget bill, provision might be made for settling the question by popular referendum.[3]

The matter of a proper budget system for the state is closely associated with that of the reorganization of the state administration into a more coherent and integrated system. The scattered and decentralized condition of the administrative agencies found in most states renders it difficult, if not impossible, to formulate and carry out a scientific budget plan.[4] If the purpose of the executive budget system is to be accomplished, it is necessary first to effect such a reorganization as will make the governor the real, instead of the mere nominal head of the administration.

This brings us to the consideration of the second main phase of the general subject, namely, internal reorganization, or the readjustment of the relations between the different executive and administrative agencies in the interests of great unity, responsibility, concentration of authority and efficiency in action. One of the main obstacles to effective administrative organization in most states, which, on account of its constitutional basis, is difficult to change, is the election of the heads of executive departments by popular vote. Considerations of party cohesion may produce some degree of harmony between these officers and the governor, inasmuch as they are all, as a rule, elected on the same party ticket. But it sometimes happens that they belong to a different party from that of the governor, or a different faction of the same party, and frequently the governor is able to exert little or no real control over them. The practice of electing the heads of departments exerts a subtle influence in dividing the administration, developing friction and causing a lack of harmony and coöperation with the governor and between the various departments. It also causes the injection of political considera-

[3] Cf. the Model State Constitution presented by the Committee on State Government of the National Municipal League, sect. 27.

[4] J. M. Mathews, *Report of the Consolidation Commission of Oregon* (1918), p. 16.

tions and ambitions into the management of elective offices which are not conducive to efficiency and coöperative action.

It is generally agreed that the short ballot should be adopted as one of the main features of a reorganized state administrative system, not primarily for the purpose of lessening the burden upon the voter, but mainly for the purpose of integrating the administration and concentrating responsibility. There is some question however, as to how short the ballot should be made. Probably the best plan would seem to be to elect only one other officer of the executive department besides the governor, either the lieutenant-governor or the auditor. The office of lieutenant-governor should either be abolished or else reconstructed into a position of greater worth and usefulness. He might be made a sort of deputy governor and relieve the governor of many of the routine duties which now distract his attention from more important matters. In case the office of lieutenant-governor is abolished, then the auditor should be retained on the elective list for two reasons. The first is in order to give him a position somewhat independent of the administration, which might be emphasized by electing him at a different time from that of the gubernatorial election. The second reason is in order to provide an officer of state-wide, instead of local election, to succeed to the governorship in case of vacancy in that office. In case the office of lieutenant-governor is not abolished, the second of these reasons for electing the auditor no longer operates, and it would be better that the latter be appointed by the legislature as its agent in keeping a check on expenditures.

The introduction of the short ballot would, of course, result in increasing the appointive power of the governor. This in itself, however, would not be sufficient to enable him to exercise an effective control over the whole administration in view of the large number and the scattered and disorganized condition of the administrative agencies in many states. It is necessary, in addition, to effect a consolidation and departmentalization of the administrative services. A reduction in the number of separate agencies is necessary for effective central control over them, as well as for their proper interrelation and coöperation. As a

result of this reduction in number and the increase of central control, the heads of the executive departments could be formed into a body of advisors or governor's cabinet for formulating the policies and planning the general work-program of the administration, upon the analogy of the cabinet officers in the national government. The consolidation of related agencies would tend to simplify the administrative organization and to make it more responsive to the governor and, through him, to the people.

There should be probably not more than a dozen main departments into which all the administrative agencies should be grouped. One reason for this limitation is that a larger body of department heads would not be suitable for consultative purposes in cabinet meetings. A more important reason is that a larger number of separate departments tends to complicate and decentralize the work of administration. The number of separate departments should be as small as feasible consistent with the grouping in each department of related functions. The consolidation of administrative agencies thus involves not only the creation of a few major departments in place of a large number of small ones, but also the grouping of related services within each major department. The exact number of departments and the grouping of functions under departments will naturally vary somewhat from state to state, due to differences in local conditions. Some large departments, however, such as those of finance, education, and public health, would probably be suitable under conditions found in all the states.

After the regrouping of the scattered administrative agencies into a few major departments has been made, it still remains to be determined what form of internal organization is desirable for these departments. Should we have at the head of the department a board, a commission, or a single commissioner? The prevalence of boards and commissions in the past has been one of the main causes of the disintegration of the administration and the diffusion of responsibility. They have amply demonstrated their incapacity for administrative work. The tendency in reorganization plans, whether proposed or in operation, has been very decidedly away from the board or commission and in

the direction of the single commissioner. It is recognized, however, that for the performance of advisory, quasi-legislative, and quasi-judicial functions several heads are usually better than one, and in these cases, therefore, some concession may be made to the board or commission type of organization. Thus, in Illinois, all of the nine departments created by the Civil Administrative Code are under single commissioners, called directors; but provision is made for certain commissions, such as the tax commission and the industrial commission, which are nominally placed in the appropriate departments. Provision is also made for certain advisory and non-executive boards in some of the departments. The Illinois plan is faulty on account of the loose and ill-defined relation between the commissions and the departments in which they are nominally placed. In departments where there are quasi-legislative or quasi-judicial functions to be performed, associate directors should be provided to act with the head director for the exercise of such functions, but the head director should be solely responsible for the administrative work.

Another question which arises is as to the proper method of selecting the heads of departments and other officers of the administration. The short ballot plan, as already indicated, provides that the governor should appoint the heads of the departments, with the possible exception of the auditor, who, under certain circumstances, may be retained on the elective list. A further question is as to whether the governor's appointments should be subject to confirmation by the senate. Such confirmation is unobjectionable if a tradition exists to the effect that appointments to cabinet positions are to be confirmed as a matter of course. This is the practice in the case of presidential appointments to such positions; but there is no assurance that state senates would everywhere take the same attitude toward the governor's appointments, especially when the governor and senate are out of political harmony. Where a power is unobjectionable only when it is not used, there seems to be no good reason for conferring it.

Efficiency and economy commissions, in their proposed plans for state administrative reorganization, usually recommend that the power of the senate to confirm appointments be retained. But this recommendation is probably made for reasons of expediency, since the proposed plan must secure the approval of the senate in order to be adopted. Looking at the matter from a more detached point of view, it seems better to dispense altogether with the action of the senate in this matter, so as to place the responsibility for appointments squarely on the shoulders of the governor where it belongs, rather than to divide it between him and the senate. The governor may need advice before making appointments, and it may be suggested that it would be sufficient to require the governor to secure the advice of the senate but not to follow it. But no provision of law is needed for this purpose, and it may be presumed that when the governor needs advice in making appointments, he will consult the persons capable of giving it, whether in or out of the senate. The only legal check that seems needful in the matter is to require that the governor issue a public statement indicating his reasons for making the appointment, which should include a description of the appointee's qualifications for the position. This would tend to prevent wholly unsuitable appointments and would at the same time concentrate responsibility for the appointment.

Some plans of administrative reorganization give the governor the power of appointing also the heads of bureaus and divisions within the major departments. But this is a mistake for three reasons. In the first place, it affords a plausible excuse for requiring that these appointments be confirmed by the senate, while no one would contend that this should be required if the appointments are made by the heads of the executive departments. In the second place, it burdens the governor with the importunities of large numbers of office seekers. The time and attention of the governor should not be distracted with matters of petty patronage, but should be free for the consideration of the larger problems of administration. In the third place, it violates the principle of the due subordination of each officer to

his superior. The governor ought not to hold the heads of departments responsible for their work unless they are given the power of appointing the heads of the divisions and bureaus within their departments, although they may consult with the governor in making the appointments. The proposal to reduce the number of elective officers does not contemplate that the total number of officers to be appointed by the governor should be increased, but rather that, instead of appointing many officers and boards of relatively minor importance, he should make only a few, but much more important appointments.[5]

Although the general scheme of administrative organization should be provided by legislative act, provision should be made for enabling the governor to meet emergencies by conferring on him the power to redistribute functions among administrative agencies in the interest of economy and efficiency, on the analogy of the power conferred on the President by the Overman Act. In the interests of efficiency and flexibility, the duties and functions of the administrative officers and employees should be determined to a large extent by executive orders and regulations rather than by the detailed provisions of legislative acts. The director of each department should be empowered to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its employees, and the distribution and performance of its business. The subordinate officers and employees, under the heads of bureaus and divisions, should not be subject to appointment for political reasons. They should have relatively secure tenure, and a proper separation of politics from administration should be effected by providing for their appointment and removal only in accordance with the principles of the merit system. This system might in time be extended even to the heads of bureaus and divisions immediately under the cabinet officers, since they are not properly policy-determining officers, but it is their duty to carry out the policies of their superiors.

It does not seem necessary that heads of departments should be appointed for definite terms of office. They should serve at

[5] J. M. Mathews, *Report of the Consolidation Commission of Oregon* (1918), p. 10.

the pleasure of the governor, subject to removal by him at any time. This is merely carrying out the plan of the national government, and has long been the law in Pennsylvania with reference to the attorney-general and the secretary of the commonwealth. It seems desirable, however, to provide against any arbitrary exercise of the removal power by requiring that, as in the case of appointments, the governor shall issue a public statement of the reasons for removal. Just as the governor is required to state his objections in vetoing a bill, so he should be required to give similar publicity to his reasons for appointments and removals.

Where terms of office of any members of the administration are specified, they should not be longer than that of the governor. The terms of statutory officers have tended to increase, but this tendency has not been so great in the case of the governor because his term is definitely fixed in the constitution. It should in all states be raised to at least four years, in order that he may have adequate opportunity for carrying out a constructive program. Moreover, his inauguration should take place about two months before the first regular legislative session in his term in order to give him a better chance than he now has of maturing his budget plans and other features of his legislative policy before the session begins.

The plan of reorganization herein proposed makes the office of governor the central pivotal point about which the whole administration revolves. It may be objected to by some on the ground that it makes the governor too powerful. This, however, is merely applying to the states the theory of the national government, in which the President is the real head of the administration. There is no great danger in conferring on the governor increased power if it is accompanied with commensurate responsibility. This responsibility will be enforced in part through the simplified machinery and the greater publicity in which the work of the administration will be conducted under the reorganized system. An adequate civil service system on the merit basis, extending preferably even to the heads of bureaus and divisions, will help to prevent a governor, if perchance so

inclined, from using his power to build up a political machine. A permanency of tenure on the part of the heads of bureaus and divisions immediately under the heads of departments will go far toward maintaining efficiency in administration in spite of the unavoidable frequency of change in the personnel of department heads. A legislative council might be created to sit between regular legislative sessions and to act as a continuous critic of the administration. In order to increase the governor's responsibility directly to the people, provision should be made for his recall by popular vote, subject to reasonable restrictions. This would enable the people to pass upon the governor's general policies prior to the end of his term, as was done in North Dakota in 1921, where the governor was recalled for the first time in any state. If the popular recall is introduced, it would then be feasible to have the governor elected for even longer than a four year term, subject to recall at stated intervals during his term. This would tend to attract abler men to the office and give them larger powers and opportunities of leadership, subject to adequate accountability to the people for the use and abuse of their powers and opportunities.